

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 918

FINAL READING

Introduced by Hadley, 37; Mello, 5.

Read first time January 12, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend
2 sections 77-5707, 77-5715, 77-5719, 77-5725, and 77-5735,
3 Reissue Revised Statutes of Nebraska; to redefine certain
4 tax incentive terms as prescribed; to provide tax
5 incentives for data centers as prescribed; to provide
6 for applicability; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5707, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-5707 Compensation means the wages and other payments
4 subject to ~~withholding for~~ the federal income medicare tax.
5 ~~purposes.~~

6 Sec. 2. Section 77-5715, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
9 project, qualified business means any business engaged in:

10 (a) The conducting of research, development, or testing
11 for scientific, agricultural, animal husbandry, food product, or
12 industrial purposes;

13 (b) The performance of data processing,
14 telecommunication, insurance, or financial services. For purposes
15 of this subdivision, financial services includes only financial
16 services provided by any financial institution subject to tax
17 under Chapter 77, article 38, or any person or entity licensed by
18 the Department of Banking and Finance or the federal Securities
19 and Exchange Commission and telecommunication services includes
20 community antenna television service, Internet access, satellite
21 ground station, data center, call center, or telemarketing;

22 (c) The assembly, fabrication, manufacture, or processing
23 of tangible personal property;

24 (d) The administrative management of the taxpayer's
25 activities, including headquarter facilities relating to such

1 activities or the administrative management of any of the
2 activities of any business entity or entities in which the taxpayer
3 or a group of its shareholders holds any direct or indirect
4 ownership interest of at least ten percent, including headquarter
5 facilities relating to such activities;

6 (e) The storage, warehousing, distribution,
7 transportation, or sale of tangible personal property;

8 (f) The sale of tangible personal property if the
9 taxpayer derives at least seventy-five percent or more of the
10 sales or revenue attributable to such activities relating to the
11 project from sales to consumers who are not related persons and are
12 located outside the state;

13 (g) The sale of software development services, computer
14 systems design, product testing services, or guidance or
15 surveillance systems design services or the licensing of technology
16 if the taxpayer derives at least seventy-five percent of the sales
17 or revenue attributable to such activities relating to the project
18 from sales or licensing either to customers who are not related
19 persons and located outside the state or to the United States
20 Government, including sales of such services, systems, or products
21 delivered by providing the customer with software or access to
22 software over the Internet or by other electronic means, regardless
23 of whether the software or data accessed by customers is stored on
24 a computer owned by the applicant, the customer, or a third party
25 and regardless of whether the computer storing the software or data

1 is located at the project;

2 (h) The research, development, and maintenance of an
3 Internet web portal. For purposes of this subdivision, Internet web
4 portal means an Internet site that allows users to access, search,
5 and navigate the Internet;

6 (i) The research, development, and maintenance of a data
7 center. For purposes of this subdivision, data center means a group
8 of computers, supporting equipment, and other organized assembly
9 of hardware or software in one or more interrelated physical
10 locations that is designed to centralize the storage, management,
11 or dissemination of data and information; or

12 ~~(i)~~ (j) Any combination of the activities listed in this
13 subsection.

14 (2) For a tier 1 project, qualified business means any
15 business engaged in:

16 (a) The conducting of research, development, or testing
17 for scientific, agricultural, animal husbandry, food product, or
18 industrial purposes;

19 (b) The assembly, fabrication, manufacture, or processing
20 of tangible personal property;

21 (c) The sale of software development services, computer
22 systems design, product testing services, or guidance or
23 surveillance systems design services or the licensing of technology
24 if the taxpayer derives at least seventy-five percent of the sales
25 or revenue attributable to such activities relating to the project

1 from sales or licensing either to customers who are not related
2 persons and are located outside the state or to the United States
3 Government, including sales of such services, systems, or products
4 delivered by providing the customer with software or access to
5 software over the Internet or by other electronic means, regardless
6 of whether the software or data accessed by customers is stored on
7 a computer owned by the applicant, the customer, or a third party
8 and regardless of whether the computer storing the software or data
9 is located at the project; or

10 (d) Any combination of activities listed in this
11 subsection.

12 (3) For a tier 6 project, qualified business means any
13 business except a business excluded by subsection (4) of this
14 section.

15 (4) Except for business activity described in subdivision
16 (1)(f) of this section, qualified business does not include any
17 business activity in which eighty percent or more of the total
18 sales are sales to the ultimate consumer of (a) food prepared
19 for immediate consumption or (b) tangible personal property which
20 is not assembled, fabricated, manufactured, or processed by the
21 taxpayer or used by the purchaser in any of the activities listed
22 in subsection (1) or (2) of this section.

23 Sec. 3. Section 77-5719, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-5719 Taxpayer means any person subject to sales and

1 use taxes under the Nebraska Revenue Act of 1967 and subject to
2 withholding under section 77-2753 and any corporation, partnership,
3 limited liability company, cooperative, including a cooperative
4 exempt under section 521 of the Internal Revenue Code of 1986,
5 as amended, limited cooperative association, or joint venture that
6 is or would otherwise be a member of the same unitary group, if
7 incorporated, that is subject to such sales and use taxes or such
8 withholding. Taxpayer does not include a political subdivision or
9 an organization that is exempt from income taxes under section
10 501(a) of the Internal Revenue Code of 1986, as amended, or any
11 partnership, limited liability company, cooperative, including a
12 cooperative exempt under section 521 of the Internal Revenue Code
13 of 1986, as amended, limited cooperative association, or joint
14 venture in which political subdivisions or organizations described
15 in section 501(c) or (d) of the code hold an ownership interest of
16 ~~ten~~ twenty percent or more.

17 Sec. 4. Section 77-5725, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-5725 (1) Applicants may qualify for benefits under the
20 Nebraska Advantage Act in one of six tiers:

21 (a) Tier 1, investment in qualified property of at least
22 one million dollars and the hiring of at least ten new employees.
23 There shall be no new project applications for benefits under this
24 tier filed after December 31, 2015, without further authorization
25 of the Legislature. All complete project applications filed on

1 or before December 31, 2015, shall be considered by the Tax
2 Commissioner and approved if the project and taxpayer qualify
3 for benefits. Agreements may be executed with regard to completed
4 project applications filed on or before December 31, 2015. All
5 project agreements pending, approved, or entered into before such
6 date shall continue in full force and effect;

7 (b) Tier 2, investment in qualified property of at least
8 three million dollars and the hiring of at least thirty new
9 employees;

10 (c) Tier 3, the hiring of at least thirty new employees.
11 There shall be no new project applications for benefits under this
12 tier filed after December 31, 2015, without further authorization
13 of the Legislature. All complete project applications filed on
14 or before December 31, 2015, shall be considered by the Tax
15 Commissioner and approved if the project and taxpayer qualify
16 for benefits. Agreements may be executed with regard to completed
17 project applications filed on or before December 31, 2015. All
18 project agreements pending, approved, or entered into before such
19 date shall continue in full force and effect;

20 (d) Tier 4, investment in qualified property of at least
21 ten million dollars and the hiring of at least one hundred new
22 employees;

23 (e) Tier 5, investment in qualified property of at least
24 thirty million dollars. Failure to maintain an average number of
25 equivalent employees as defined in section 77-5727 greater than or

1 equal to the number of equivalent employees in the base year shall
2 result in a partial recapture of benefits; and

3 (f) Tier 6, investment in qualified property of at least
4 ten million dollars and the hiring of at least seventy-five new
5 employees or the investment in qualified property of at least
6 one hundred million dollars and the hiring of at least fifty new
7 employees. Agreements may be executed with regard to completed
8 project applications filed before January 1, 2016. All project
9 agreements pending, approved, or entered into before such date
10 shall continue in full force and effect.

11 (2) When the taxpayer has met the required levels of
12 employment and investment contained in the agreement for a tier 1,
13 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be
14 entitled to the following incentives:

15 (a) A refund of all sales and use taxes for a tier 2,
16 tier 4, tier 5, or tier 6 project or a refund of one-half of all
17 sales and use taxes for a tier 1 project paid under the Local
18 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
19 13-319, 13-324, and 13-2813 from the date of the application
20 through the meeting of the required levels of employment and
21 investment for all purchases, including rentals, of:

22 (i) Qualified property used as a part of the project;

23 (ii) Property, excluding motor vehicles, based in this
24 state and used in both this state and another state in connection
25 with the project except when any such property is to be used for

1 fundraising for or for the transportation of an elected official;

2 (iii) Tangible personal property by the owner of the
3 improvement to real estate that is incorporated into real estate as
4 a part of a project; and

5 (iv) Tangible personal property by a contractor or
6 repairperson after appointment as a purchasing agent of the owner
7 of the improvement to real estate. The refund shall be based on
8 fifty percent of the contract price, excluding any land, as the
9 cost of materials subject to the sales and use tax; and

10 (b) A refund of all sales and use taxes for a tier 2,
11 tier 4, tier 5, or tier 6 project or a refund of one-half of all
12 sales and use taxes for a tier 1 project paid under the Local
13 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
14 13-319, 13-324, and 13-2813 on the types of purchases, including
15 rentals, listed in subdivision (a) of this subsection for such
16 taxes paid during each year of the entitlement period in which
17 the taxpayer is at or above the required levels of employment and
18 investment.

19 (3) Any taxpayer who qualifies for a tier 1, tier 2,
20 tier 3, or tier 4 project shall be entitled to a credit equal to
21 three percent times the average wage of new employees times the
22 number of new employees if the average wage of the new employees
23 equals at least sixty percent of the Nebraska average annual wage
24 for the year of application. The credit shall equal four percent
25 times the average wage of new employees times the number of new

1 employees if the average wage of the new employees equals at least
2 seventy-five percent of the Nebraska average annual wage for the
3 year of application. The credit shall equal five percent times the
4 average wage of new employees times the number of new employees
5 if the average wage of the new employees equals at least one
6 hundred percent of the Nebraska average annual wage for the year of
7 application. The credit shall equal six percent times the average
8 wage of new employees times the number of new employees if the
9 average wage of the new employees equals at least one hundred
10 twenty-five percent of the Nebraska average annual wage for the
11 year of application. For computation of such credit:

12 (a) Average annual wage means the total compensation paid
13 to employees during the year at the project who are not base-year
14 employees and who are paid wages equal to at least sixty percent
15 of the Nebraska average weekly wage for the year of application,
16 excluding any compensation in excess of one million dollars paid
17 to any one employee during the year, divided by the number of
18 equivalent employees making up such total compensation;

19 (b) Average wage of new employees means the average
20 annual wage paid to employees during the year at the project who
21 are not base-year employees and who are paid wages equal to at
22 least sixty percent of the Nebraska average weekly wage for the
23 year of application, excluding any compensation in excess of one
24 million dollars paid to any one employee during the year; and

25 (c) Nebraska average annual wage means the Nebraska

1 average weekly wage times fifty-two.

2 (4) Any taxpayer who qualifies for a tier 6 project shall
3 be entitled to a credit equal to ten percent times the total
4 compensation paid to all employees, other than base-year employees,
5 excluding any compensation in excess of one million dollars paid to
6 any one employee during the year, employed at the project.

7 (5) Any taxpayer who has met the required levels of
8 employment and investment for a tier 2 or tier 4 project shall
9 receive a credit equal to ten percent of the investment made in
10 qualified property at the project. Any taxpayer who has met the
11 required levels of investment and employment for a tier 1 project
12 shall receive a credit equal to three percent of the investment
13 made in qualified property at the project. Any taxpayer who has
14 met the required levels of investment and employment for a tier
15 6 project shall receive a credit equal to fifteen percent of the
16 investment made in qualified property at the project.

17 (6) The credits prescribed in subsections (3), (4), and
18 (5) of this section shall be allowable for compensation paid and
19 investments made during each year of the entitlement period that
20 the taxpayer is at or above the required levels of employment and
21 investment.

22 (7) The credit prescribed in subsection (5) of this
23 section shall also be allowable during the first year of the
24 entitlement period for investment in qualified property at the
25 project after the date of the application and before the required

1 levels of employment and investment were met.

2 (8)(a) A taxpayer who has met the required levels of
3 employment and investment for a tier 4 or tier 6 project shall
4 receive the incentive provided in this subsection. A taxpayer who
5 has a project for an Internet web portal or a data center and who
6 has met the required ~~level~~ levels of employment and investment for
7 a tier 2 project or the required level of investment for a tier 5
8 project shall receive the incentive provided in this subsection for
9 property in subdivision (8)(b)(ii) of this section. Such investment
10 and hiring of new employees shall be considered a required level of
11 investment and employment for this subsection and for the recapture
12 of benefits under this subsection only.

13 (b) The following property used in connection with such
14 project or projects and acquired by the taxpayer, whether by
15 lease or purchase, after the date the application was filed shall
16 constitute separate classes of personal property:

17 (i) Turbine-powered aircraft, including turboprop,
18 turbojet, and turbofan aircraft, except when any such aircraft is
19 used for fundraising for or for the transportation of an elected
20 official;

21 (ii) Computer systems, made up of equipment that is
22 interconnected in order to enable the acquisition, storage,
23 manipulation, management, movement, control, display, transmission,
24 or reception of data involving computer software and hardware, used
25 for business information processing which require environmental

1 controls of temperature and power and which are capable of
2 simultaneously supporting more than one transaction and more than
3 one user. A computer system includes peripheral components which
4 require environmental controls of temperature and power connected
5 to such computer systems. Peripheral components shall be limited to
6 additional memory units, tape drives, disk drives, power supplies,
7 cooling units, data switches, and communication controllers;

8 (iii) Depreciable personal property used for a
9 distribution facility, including, but not limited to, storage
10 racks, conveyor mechanisms, forklifts, and other property used to
11 store or move products;

12 (iv) Personal property which is business equipment
13 located in a single project if the business equipment is involved
14 directly in the manufacture or processing of agricultural products;
15 and

16 (v) For a tier 6 project, any other personal property
17 located at the project.

18 (c) Such property shall be eligible for exemption from
19 the tax on personal property from the first January 1 following
20 the date of acquisition for property in subdivision (8)(b)(i)
21 of this section, or from the first January 1 following the end
22 of the year during which the required levels were exceeded for
23 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this
24 section, through the ninth December 31 after the first year any
25 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)

1 of this section qualifies for the exemption. In order to receive
2 the property tax exemptions allowed by subdivision (8)(b) of this
3 section, the taxpayer shall annually file a claim for exemption
4 with the Tax Commissioner on or before May 1. The form and
5 supporting schedules shall be prescribed by the Tax Commissioner
6 and shall list all property for which exemption is being sought
7 under this section. A separate claim for exemption must be filed
8 for each project and each county in which property is claimed
9 to be exempt. A copy of this form must also be filed with the
10 county assessor in each county in which the applicant is requesting
11 exemption. The Tax Commissioner shall determine the eligibility
12 of each item listed for exemption and, on or before August 1,
13 certify such to the taxpayer and to the affected county assessor.
14 In determining the eligibility of items of personal property for
15 exemption, the Tax Commissioner is limited to the question of
16 whether the property claimed as exempt by the taxpayer falls
17 within the classes of property described in subdivision (8)(b) of
18 this section. The determination of whether a taxpayer is eligible
19 to obtain exemption for personal property based on meeting the
20 required levels of investment and employment is the responsibility
21 of the Tax Commissioner.

22 (9)(a) The investment thresholds in this section for a
23 particular year of application shall be adjusted by the method
24 provided in this subsection.

25 (b) For tier 1, tier 2, tier 4, and tier 5, beginning

1 October 1, 2006, and each October 1 thereafter, the average
2 Producer Price Index for all commodities, published by the United
3 States Department of Labor, Bureau of Labor Statistics, for the
4 most recent twelve available periods shall be divided by the
5 Producer Price Index for the first quarter of 2006 and the result
6 multiplied by the applicable investment threshold. The investment
7 thresholds shall be adjusted for cumulative inflation since 2006.

8 (c) For tier 6, beginning October 1, 2008, and each
9 October 1 thereafter, the average Producer Price Index for all
10 commodities, published by the United States Department of Labor,
11 Bureau of Labor Statistics, for the most recent twelve available
12 periods shall be divided by the Producer Price Index for the
13 first quarter of 2008 and the result multiplied by the applicable
14 investment threshold. The investment thresholds shall be adjusted
15 for cumulative inflation since 2008.

16 (d) If the resulting amount is not a multiple of one
17 million dollars, the amount shall be rounded to the next lowest one
18 million dollars.

19 (e) The investment thresholds established by this
20 subsection apply for purposes of project qualifications for all
21 applications filed on or after January 1 of the following year for
22 all years of the project. Adjustments do not apply to projects
23 after the year of application.

24 Sec. 5. Section 77-5735, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-5735 The changes made in sections 77-5703, 77-5708,
2 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and
3 77-5731 by Laws 2008, LB 895, and sections 77-5707.01, 77-5719.01,
4 and 77-5719.02 apply to all applications filed on and after
5 April 18, 2008. For all applications filed prior to such date,
6 the provisions of the Nebraska Advantage Act as they existed
7 immediately prior to such date apply. The changes made in sections
8 77-5707, 77-5715, 77-5719, and 77-5725 by this legislative bill
9 apply to all applications filed on or after the effective date
10 of this act. For all applications filed prior to such date,
11 the provisions of the Nebraska Advantage Act as they existed
12 immediately prior to such date apply.

13 Sec. 6. Original sections 77-5707, 77-5715, 77-5719,
14 77-5725, and 77-5735, Reissue Revised Statutes of Nebraska, are
15 repealed.